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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 494

FRED WAYNE,

Petitioner,

vs.

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

FRANCIS MURPHY,
Counsel for Petitioner.

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vs. *Petitioner,*

THE UNITED STATES OF AMERICA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

To the Honorable the Supreme Court of the United States:

The petition of Fred Wayne respectfully shows to this Honorable Court:

Petitioner was convicted (R. 4) in the District Court of the United States for the District of North Dakota, upon an indictment (R. 1) charging him with the offense of violating the provisions of Section 2139 of the Revised Statutes of the United States (U. S. C. A., Title 25, Section 241).

Upon such conviction, petitioner was sentenced to imprisonment and a fine on each of three counts, the sentence on Count III to run concurrently with the sentence on Count II (R. 4 & 5).

An appeal was perfected from such judgment to the Circuit Court of Appeals for the Eighth Circuit (R. 5 & 6).

Upon appeal the Circuit Court of Appeals affirmed the judgment of conviction (R. 41) in an opinion filed October 6, 1943 (R. 36).

On the 19th day of October, 1943, a petition for rehearing was duly filed (R. 42-43), which petition was on the 4th day of November, 1943, denied (R. 44).

Thereupon motion for an order staying the issuance of the mandate (R. 44-45) was filed, which motion on the 4th day of November, 1943, was granted for a period of thirty days (R. 45-46).

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of Congress of February 13th, 1925, U. S. C. A., Title 28, Section 347.

This petition and the printed record and supporting brief have been filed with the Clerk of this Court within thirty days after the entry of final judgment in the Circuit Court of Appeals for the Eighth Circuit in compliance with Rule XI of the Rules of Practice and Procedure promulgated by this Court May 7, 1943.

The question presented is whether under an indictment charging sales of beer to an Indian ward of the Government in violation of Section 2139 R. S. as amended, proof of sales of beer by name only is sufficient, and whether the Circuit Court of Appeals for the Eighth Circuit was in error in holding that beer is intoxicating as a matter of common knowledge and requires no proof.

Your petitioner is advised that the decision of the Circuit Court of Appeals for the Eighth Circuit holding that beer is a malt liquor and is intoxicating as a matter of common knowledge and that its intoxicating qualities require no

proof is in conflict with applicable decisions of this Honorable Court.

United States of America v. *Standard Brewery*, 251 U. S. 210, 64 L. Ed. 229, 40 S. C. R. 139.

Your petitioner presents herewith as a part of this petition transcript of the record in the Circuit Court of Appeals.

WHEREFORE, Your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Eighth Circuit, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be named therein, a full and complete transcript of the record and all proceedings in this case, numbered and entered on its docket as No. 12495—*Fred Wayne, appellant*, vs. *United States of America, appellee*, and that the judgment of that Court may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

FRANCIS MURPHY,
Counsel for Petitioner,
Fargo, North Dakota.